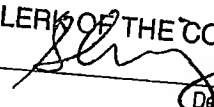


FILED
San Francisco County Superior Court

JUL 05 2019

CLERK OF THE COURT
BY: 
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff,

v.

ALL PERSONS INTERESTED IN THE
MATTER OF Proposition C on the November 6,
2018 San Francisco ballot, authorizing an
increase in specified business taxes to fund
specified homeless services in San Francisco, and
all other matters and proceedings relating thereto,

Defendants.

CALIFORNIA BUSINESS PROPERTIES
ASSOCIATION; HOWARD JARVIS
TAXPAYERS ASSOCIATION; and
CALIFORNIA BUSINESS ROUNDTABLE,

Interested Persons/Defendants.

Case No. CGC-19-573230

**ORDER ON CROSS-MOTIONS FOR
JUDGMENT ON THE PLEADINGS**

Case No. CGC-19-573230

ORDER ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

1 On July 3, 2019, this matter came on regularly for hearing before the Court pursuant to the
2 motion for judgment on the pleadings filed by Plaintiff City and County of San Francisco (the
3 City), and the cross-motion for judgment on the pleadings filed by Interested Persons/Defendants
4 California Business Properties Association, Howard Jarvis Taxpayers Association, and California
5 Business Roundtable (CBPA or Defendants). All parties appeared by their respective counsel of
6 record, as reflected in the minutes and reporter's transcript. Having fully considered the papers
7 filed in support of and in opposition to the cross-motions for judgment on the pleadings, and the
8 arguments of counsel presented at the hearing, this Court rules as follows:

9 **I. Introduction**

10 The City brought this validation action following the November 6, 2018 Consolidated
11 General Election in the City and County of San Francisco to obtain a ruling concerning the validity
12 of Proposition C, a voter initiative that appeared on the ballot in that election. Proposition C, which
13 in the Voter Information Guide bears the short title, "Additional Business Taxes to Fund Homeless
14 Services," would add Article 28, the "Homelessness Gross Receipts Tax Ordinance," to the City's
15 Business and Tax Regulations Code. (Prop. C, Legal Text, in Voter Information Pamphlet, City's
16 RJN, Ex. E at 107-112.) Article 28 would impose an additional gross receipts tax on specified
17 revenues of certain local businesses and an additional administrative office tax on certain other
18 businesses, and would devote the resulting revenues to specified services for the homeless,
19 including permanent housing, mental health services, and short-term shelter and access to hygiene
20 programs. (*Id.* at 74.) Proposition C received the affirmative votes of 61.34% of the 351,326 City
21 voters who voted on that measure. (Compl. ¶ 4; Ans. ¶ 4.)¹

22 Defendants CPBA *et al.* filed an answer to the City's complaint. They assert that
23 Proposition C imposed a special tax that under the California Constitution and the San Francisco
24 Charter required the approval of two-thirds of the voters, and that having failed to achieve that

25 ¹ The Court grants the City's unopposed request for judicial notice of the Voter Information
26 Pamphlet including the text of Proposition C, various Charter provisions and ordinances, and the
27 parties' pleadings.

1 supermajority, it was not validly enacted into law. The City disputes Defendants' contention that
2 either of the provisions of the California Constitution upon which they rely, or the Charter, required
3 a supermajority vote on Proposition C. It asserts, instead, that the initiative required only a simple
4 majority of the electors, as it informed the voters in the November 2018 election. (See Voter
5 Information Pamphlet, City's RJN, Ex. E at 74-75 ["This measure requires 50%+1 affirmative
6 votes to pass."].)

7 The Court's resolution of the parties' competing contentions turns largely on the language
8 of the constitutional provisions at issue, the legislative history of the voter constitutional initiatives
9 by which they were added to the California Constitution, appellate authority construing those
10 provisions, particularly the California Supreme Court's decision in *California Cannabis Coalition*
11 *v. City of Upland* (2017) 3 Cal.5th 924, and general principles concerning the people's initiative
12 power. For the following reasons, the City's motion for judgment on the pleadings is granted, and
13 Defendants' cross-motion is denied.

14 II. *California Cannabis Coalition v. City of Upland*

15 "The California Constitution, as amended by a series of voter initiatives, places limitations
16 on the authority of state and local governments to collect revenue through taxes, fees, charges, and
17 other types of levies." (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3
18 Cal.5th 1191, 1195; see *Jacks v City of Santa Barbara* (2017) 3 Cal.5th 248, 258-260.) In
19 *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, our Supreme Court recently
20 addressed a broadly similar issue to that presented here: whether these provisions, which limit the
21 ability of state and local *governments* to impose taxes, "also restrict[] the ability of *voters* to impose
22 taxes via initiative." (*Id.* at 930.) As the parties agree, a careful examination of the Court's
23 analysis and reasoning in *California Cannabis Coalition* is central to the resolution of the issues
24 presented here.

25 *California Cannabis Coalition* involved a voter initiative ordinance that would have
26 required medical marijuana dispensaries to pay an annual \$75,000 licensing and inspection fee.

1 The City of Upland determined that the fee was actually a general tax. Because article XIII C,
2 section 2(b) of the California Constitution precludes local governments from imposing general
3 taxes unless they are submitted to voters at a general election, Upland refused to call a special
4 election for the proposed initiative, and instead ordered the initiative submitted to the voters at the
5 next general election. The initiative proponents sued, alleging that the City had violated the
6 Elections Code by failing to submit the initiative to the voters at a special election. They also
7 argued that article XIII C, section 2 did not apply because the charge proposed by the initiative was
8 not a tax, nor was it imposed by local government. The trial court denied the writ petition, the
9 Court of Appeal reversed, and the California Supreme Court granted review and elected to hear the
10 case, even though the initiative at issue was defeated at the November 8, 2016 ballot, because the
11 case presented “important questions of continuing public interest.” (3 Cal.5th at 933.)

12 The Court held that the requirement in article XIII C, section 2(b) that general taxes be
13 submitted to voters at a general election did not apply to taxes proposed by voter initiative. (*Id.* at
14 943, 945.) Although the technical holding of the case thus was relatively narrow, the Court’s
15 analysis and reasoning extended far more broadly. The Court viewed the issue before it as
16 involving “the interplay of two constitutional provisions”: the provisions of article II of the state
17 Constitution safeguarding the people’s initiative power, and article XIII C’s limitation on the
18 ability of local governments to impose (or increase) general taxes. (*Id.* at 930.) Resting its holding
19 on the importance of the people’s initiative power, the plain language of article XIII C, the
20 constitutional provision in question in that case, and other evidence of the purpose of that
21 provision, the Court concluded that “article XIII C does not limit voters’ ‘power to raise taxes by
22 statutory initiative.’” (*Id.* at 931, quoting *Kennedy Wholesale, Inc. v. State Bd. of Equalization*
23 (1991) 53 Cal.3d 245, 251.) As it explained,

24 A contrary conclusion would require an unreasonably broad construction of the term “local
25 government” at the expense of the people’s constitutional right to direct democracy,
26 undermining our longstanding and consistent view that courts should protect and liberally
27 construe it. . . . Without a direct reference in the text of a provision—or a similarly clear,
unambiguous indication that it was within the ambit of a provision’s purpose to constrain

1 the people's initiative power—we will not construe a provision as imposing such a
2 limitation.

3 (*Id.*)

4 The Court began its analysis with the text of article XIII C, section 2, which applies only to
5 actions taken by a “local government.” (*Id.* at 936.) Article XIII C defines that term to mean “any
6 county, city, city and county, including a charter city or county, any special district, or any other
7 local or regional governmental entity.” (Cal. Const., art. XIII C, § 1(b).) The Court rejected
8 Upland’s argument that this definition is broad enough to include the electorate. (3 Cal.5th at 937.)
9 It reasoned that the common understanding of local government does not include the electorate;
10 that the term “local government” was used in the findings and declarations of Proposition 218, by
11 which article XIII C was enacted in 1996, to refer to municipalities, not their voters; and that
12 standard canons of statutory interpretation would preclude such a reading. (*Id.* at 937-939; see also
13 *id.* at 946-947 [“nothing in the text of article XIII C, or its context, supports the conclusion that the
14 term ‘local government’ was meant to encompass the electorate.”].)

15 Moreover, the Court emphasized, nothing in Proposition 218 showed any intent to burden
16 voters’ power to propose and adopt initiatives concerning taxation. Rather, the Court observed, the
17 only portion of article XIII C that mentioned the voters’ direct democracy rights appears in section
18 3, which suggests that section 2 was not intended to limit those rights. (See *id.* at 938-939.)
19 Further, nothing in the ballot materials suggested that the voters intended to constrain the power of
20 the initiative. “To the contrary: The crux of the concern repeatedly reflected in the ballot materials
21 is with local governments and politicians—not the electorate—imposing taxes. Nowhere in the
22 materials is there any suggestion that Proposition 218 would rescue voters from measures they
23 might, through a majority vote, impose on themselves.” (*Id.* at 940.) Significantly in light of the
24 issues presented here, the Court found further support for that reading in the ballot materials for
25 Proposition 13, which added article XIII A in 1978, and Proposition 26, which amended article
26 XIII C in 2010. (*Id.* at 941.)
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1 Finally, the Court adopted a “clear statement” rule in order to protect the initiative power,
2 which is liberally construed. “Without an unambiguous indication that a provision’s purpose was
3 to constrain the initiative power, we will not construe it to impose such limitations. Such evidence
4 might include an explicit reference to the initiative power in a provision’s text, or sufficiently
5 unambiguous statements regarding such a purpose in ballot materials.” (*Id.* at 945-946.)

6 Two Justices dissented in part, disagreeing with the majority’s core conclusion that “when
7 article XIII C speaks of taxes imposed by local government, it means taxes enacted by the city
8 council or other public officials; local taxes enacted by voter initiative are exempt.” (*Id.* at 949
9 [conc. and dis. opn. of Kruger, J., joined by Liu, J.].) The dissenting Justices anticipated the very
10 issue presented here, observing that because the language of article XIII C, section 2(b) is
11 “essentially identical” to that of section 2(d), “from here on out, special taxes can be enacted by a
12 simple majority of the electorate” rather than the two-thirds vote otherwise required for approval of
13 a special tax. (*Id.* at 956.)

14 III. Discussion

15 Defendants base their contention that Proposition C required a two-thirds or supermajority
16 vote on three different provisions. *First*, Defendants assert that Proposition C is a special tax that
17 requires a supermajority vote under article XIII C, section 2(d) of the California Constitution.
18 *Second*, Defendants contend that Proposition C also requires a two-thirds vote under article XIII A,
19 section 4, which was added in 1978 by the initiative commonly known as Proposition 13.² *Third*
20 and finally, Defendants contend that a supermajority vote was required by the San Francisco City
21 Charter. The Court addresses each issue in turn.

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25 ² The City does not dispute that Proposition C involves a “special tax” within the meaning of both
26 provisions at issue here. (See Cal. Const., art. XIII C, § 1(d) [defining special tax as “any tax
imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a
general fund”]; *Jacks v. City of Santa Barbara*, 3 Cal.5th at 258-260.)
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Moreover, the balance of the Court's reasoning in *California Cannabis Coalition* applies equally here, and supports the same conclusion. In its opinion, the Court repeatedly referred generally to article XIII C, and not merely to Section 2(b) of that article. (See, e.g., 3 Cal.5th at 930 ["The question before us is whether article XIII C also restricts the ability of voters to impose taxes via initiative"; "we agree with the Court of Appeal that article XIII C does not limit voters' 'power to raise taxes by statutory initiative'"]; *id.* at 940-941 [concluding that "article XIII C employs the term 'local government' as it is commonly understood and that the provision's intended purpose did not include limiting voters' 'power to raise taxes . . . by statutory initiative.'"]; *id.* at 946-947 ["nothing in the text of article XIII C, or its context, supports the conclusion that the term 'local government' was meant to encompass the electorate"].) That was not, as Defendants seem to imply, due to inattention on the Court's part; it was because the Court's reasoning related to Proposition 218, and its ballot materials, *as a whole*, and not merely to the particular subdivision of the provision before it. The Court concluded that neither Proposition 218 nor its ballot materials contained any "clear statement or equivalent evidence" that it was intended to constrain the people's power of initiative. (*Id.* at 946.) That conclusion applies equally here.

Defendants rely heavily on a passage from the majority opinion that, they contend, supports their position:

[W]hen an initiative's intended purpose includes imposing requirements on voters, evidence of such a purpose is clear. In article XIII C, section 2, subdivision (d), for example, the enactors adopted a requirement providing that, before a local government can impose, extend, or increase any special tax, voters must approve the tax by a two-thirds vote. That constitutes a higher vote requirement than would otherwise apply. [Citation.] That the voters explicitly imposed a procedural two-thirds vote requirement on themselves in article XIII C, section 2, subdivision (d) is evidence that they did not implicitly impose a procedural timing requirement in subdivision (b).

(*Id.* at 943.) Defendants highlight in particular the phrase, "the voters explicitly imposed a procedural two-thirds vote requirement *on themselves*," suggesting that the Court believed the two-thirds voting requirement in Section 2(d) would continue to apply to voter initiatives. However,

1 the immediately preceding sentence refers to imposition of a tax by a local government, which as
2 discussed does not include the electorate. Thus, this language appears to imply that the voters
3 imposed the two-thirds voting requirement on themselves *only with respect to taxes placed on the*
4 *ballot by local government* (e.g., in San Francisco, by the Mayor or the Board of Supervisors). It
5 does not explicitly impose this heightened procedural burden on *all* special taxes voted on by the
6 electorate, whatever their source. The Court cannot view this single sentence, which at best
7 constitutes ambiguous dictum, as requiring a different conclusion, particularly when the entire
8 thrust of the analysis and reasoning of the Court's opinion points in the opposite direction. (See
9 also *id.* at 956 n.7 [observing that the majority opinion contains language that "could be read to
10 suggest that article XIII C, section 2(d) should be interpreted differently from section 2(b)," but
11 expressing the view that "Sections 2(b) and 2(d) are, in all pertinent respects, indistinguishable"
12 and there is no basis for construing them differently] [conc. and dis. opn. of Kruger, J.].)

13 **B. Article XIII A, Section 4 (Proposition 13)**

14 Defendants also contend that Proposition C is invalid because Article XIII A, section 4 of
15 the California Constitution, which was enacted by Proposition 13 in 1978, required a two-thirds
16 vote. Article XIII A, section 4 provides, "Cities, Counties and special districts, by a two-thirds
17 vote of the qualified electors of such district, may impose special taxes on such district, except ad
18 valorem taxes on real property or a transaction tax or sales tax on the sale of real property within
19 such City, County or special district." This provision, "although written in permissive terms, was
20 intended to circumscribe the taxing power of local government." (*Rider v. County of San Diego*
21 (1991) 1 Cal.4th 1, 6.) The same conclusion follows with regard to this provision as to Article XIII
22 C, section 2(d): it does not apply to taxes by voter initiative.

23 First, Article XIII A, section 4 employs closely similar language to that of Article XIII C,
24 section 2(d). The latter, as we have seen, prohibits any "local government" from imposing a
25 special tax without a two-thirds vote, and defines that term to mean "any county, city, city and
26 county, including a charter city or county, any special district, or any other local or regional
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1 governmental entity.” Article XIII A, section 4 similarly applies to “Cities, Counties and special
2 districts”—all of which are public agencies specifically referred to in article XIII C’s definition.
3 Indeed, as Defendants acknowledge, Proposition 218, the “Right to Vote on Taxes Act,” merely
4 “reiterated, reaffirmed, and did not alter” the two-thirds vote requirement enacted by Proposition
5 13. (See also *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24
6 Cal.4th 830, 838 [“Proposition 218 is Proposition 13’s progeny. Accordingly, it must be construed
7 in that context.”].) Thus, the analysis must be the same for these two similarly worded provisions.

8 Moreover, just as with Proposition 218, there is nothing in either the text of Proposition 13
9 itself or in the accompanying ballot materials that provides any “clear statement” of the voters’
10 intent to constrain the people’s initiative power. To the contrary, as the Supreme Court recognized
11 in *California Cannabis Coalition*, the ballot materials concerning Proposition 13 “similarly evince
12 a specific concern with *politicians* and their imposition of taxes without voter approval.
13 [Citations.] . . . All of this is more evidence that the drafters of these propositions [Propositions 13
14 and 26], like the drafters of Proposition 218, simply did not contemplate that they were affecting
15 the power of voters to propose taxes via initiatives.” (3 Cal.5th at 941; see also *Kennedy*
16 *Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249 [“Nothing in the official
17 ballot pamphlet [of Proposition 13] supports the inference that the voters intended to limit their
18 own power to raise taxes in the future by statutory initiative.”].)³ In short, the same conclusion
19 follows under Proposition 13 as under Proposition 218: the requirement of a two-thirds vote
20 applies only to taxes imposed by local governments, not those enacted as a result of voter
21 initiatives.

22 C. San Francisco Charter

23 Defendants also contend that the San Francisco Charter required a two-thirds vote. That
24 contention is based on the following reasoning: (1) Article XVII of the Charter defines “initiative”

25 ³ Defendants take issue with that characterization of Proposition 13’s ballot materials, but they do
26 not point to anything in those materials that expressly refers to the possibility of the voters
themselves raising taxes by way of a ballot initiative.

1 to include “a proposal by the voters with respect to any ordinance, act or other measure which is
2 within the powers conferred upon the Board of Supervisors to enact”; (2) by virtue of article XIII
3 A, § 4 and article XIII C, § 2(d), the Board of Supervisors is not empowered to enact a special tax
4 without the concurrences of two-thirds of the electors; (3) therefore, the voters’ initiative power is
5 similarly constrained.

6 This argument is readily dismissed. *California Cannabis Coalition* explained that “where
7 legislative bodies retain lawmaking authority subject to procedural limitations, e.g., notice and
8 hearing requirements [citation] or *two-thirds vote requirements* [citation], we presume such
9 limitations do not apply to the initiative power absent evidence that such was the restrictions’
10 intended purpose.” (3 Cal.5th at 942 [emphasis added]; see also *Kennedy Wholesale*, 53 Cal.3d at
11 249 [reasoning that while “the voters’ power is presumed to be coextensive with the Legislature’s,”
12 that does not mean that “legislative *procedures*, such as voting requirements, apply to the
13 electorate”].) It follows that the two-thirds vote requirement placed on the Board of Supervisors
14 must be presumed not to apply to the electorate, absent evidence of a clear indication that it was
15 intended to do so. Plaintiffs point to no such evidence.

16 D. Defendants’ Remaining Arguments Lack Merit

17 Defendants raise a number of additional arguments. None has merit.

18 First, Defendants assert that for many years, the “prevailing understanding” has been that
19 local special taxes require a two-thirds vote of the electorate, whether the tax was proposed by the
20 local government or by initiative petition, which they assert should be considered persuasive
21 evidence of the meaning of Propositions 13 and 218. However, the two Court of Appeal opinions
22 Defendants point to supply no convincing evidence of this supposed “historical consensus.” *City of*
23 *Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264 held that a surcharge on waste disposal
24 imposed by a voter initiative was not a special tax within the meaning of Proposition 13, but rather
25 was a valid regulatory fee. (*Id.* at 280-285.) As a result, the court did not reach the question
26 whether the initiative required a two-thirds vote. And in *Altadena Library Dist. v. Bloodgood*
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(1987) 192 Cal.App.3d 585, the court held only that a library district was a “special district” within the meaning of Proposition 13 (in addition to rejecting a novel claim that the supermajority requirement triggered close scrutiny as a matter of equal protection). (*Id.* at 588.) While that court may have “implicitly” assumed that Proposition 13 applies to voter-circulated initiatives, as Defendants contend, the issue was not raised, and the court therefore did not address it. Neither case is authority for the proposition for which Defendants claim it stands. (See *People v. Brown* (2012) 54 Cal.4th 314, 330 [it is axiomatic that “cases are not authority for propositions not considered.”].) In any event, of course, both cases long predated the Supreme Court’s 2017 decision in *California Cannabis Coalition*, which is binding on this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; see *Newport Harbor Offices & Marina, LLC v. Morris Cerullo World Evangelism* (2018) 23 Cal.App.5th 28, 41 [regardless of whether a recent California Supreme Court decision may be characterized as an intervening change in law, lower courts are bound to follow it].)⁴

Second, Defendants argue that because the electorate is generally deemed to have been aware of existing laws and judicial constructions at the time an initiative is enacted, the voters who enacted Proposition 218 in 1996 must be deemed to have intended to limit their power of initiative in adopting article XIII A, section 4. That argument is doubly flawed. Contrary to Defendants’ argument, none of the decisions to which they point clearly held that the two-thirds vote requirement applied to voter initiatives, such that the voters must be deemed to have been aware of

⁴ Defendants seek judicial notice of official ballot materials for local ballot propositions submitted to San Francisco voters in 2004 and 2016 (Def. RJN, Exs. 3, 4) and a copy of the Legislative Analyst’s analysis of a proposed initiative constitutional amendment that was never submitted to the voters (Ex. 5). Defendants also seek to draw the Court’s attention to positions taken by other California cities including Oakland and Fresno in litigation pending in other Superior Courts, and to a newspaper article from the *San Francisco Chronicle* quoting a commentator’s characterization of San Francisco’s position on the issues presented here. The Court declines to consider those materials, none of which is a proper subject of judicial notice or has any bearing on the issues before it. Likewise, the Court denies the City’s request that it consider a press release issued by the Howard Jarvis Taxpayers Association regarding the possible effects of the Supreme Court’s decision. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [matter to be judicially noticed must be relevant to a material issue], overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.)

1 those decisions when they were asked to vote on Proposition 218. To the contrary, in *Kennedy*
2 *Wholesale*, the California Supreme Court “reach[ed] the same conclusion” as to article XIII A as
3 the Court later reached with respect to article XIII C: that it “does not limit voters’ ‘power to raise
4 taxes by statutory initiative.’” (*California Cannabis Coalition*, 3 Cal.5th at 931.)

5 Third and finally, Defendants assert that enforcing the two-thirds vote requirement would
6 advance the goal of protecting the voters’ initiative rights, because Propositions 13 and 218 were
7 themselves adopted pursuant to the exercise of the initiative power. However, that argument
8 actually undercuts rather than advances Defendants’ position. As the Court pointed out in
9 *California Cannabis Coalition*, “had the voters wanted the procedural requirements contained in
10 article XIII C, section 2, subdivision (b) to apply to the initiative power, Proposition 218 could
11 have made that clear” through the use of clear and unambiguous language. (23 Cal.5th at 943.)
12 “The voters did not do so, and we will not infer such a purpose. [Citations.] Particularly because,
13 given that article XIII C was enacted via initiative constitutional amendment, its enactors were
14 certainly aware of the initiative power.” (*Id.*)

15
16 **IV. Conclusion**

17 For the foregoing reasons, the City’s motion for judgment on the pleadings is granted, and
18 Defendants’ cross-motion for judgment on the pleadings is denied.

19 **IT IS SO ORDERED.**

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21 Dated: July 5, 2019

22 
23 ETHAN P. SCHULMAN
24 JUDGE OF THE SUPERIOR COURT
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CGC-19-573230

**CITY AND COUNTY OF SAN FRANCISCO VS. ALL
PERSONS INTERESTED IN THE MATTER OF**

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on July 05, 2019 I served the foregoing **Order on Cross-motions for judgment on the pleadings** on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: July 05, 2019


By: SHIRLEY LE

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